

JUL 25, 2003 3:00PM

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July 25, 2003

VIA FACSIMILE & FIRST-CLASS MAIL

Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

*Comment to
AOR 2003-15*

Re: Advisory Opinion Request 2003-15

Dear Mr. Norton:

On behalf of the Bipartisan Legal Advisory Group¹, we are writing to comment on the above-captioned request submitted on behalf of Representative Denise L. Majette, who wishes to establish a Legal Expense Fund in accordance with the Rules of the U.S. House of Representatives and the regulations of the House Committee on Standards of Official Conduct. Pursuant to 11 C.F.R. § 112.3(b), we request that the time for comments be extended to permit acceptance of this comment.

Representative Majette was named as a defendant in a civil lawsuit filed on October 4, 2002 in the United States District Court for the Northern District of Georgia. This suit was brought by supporters of her primary opponent, former Representative Cynthia McKinney, and alleged that "malicious crossover voting" in the 2002 Democratic primary for the 4th Congressional District of Georgia infringed those supporters' constitutional rights and violated the Voting Rights Act. After Representative Majette filed a motion to dismiss on December 5, 2002, the plaintiffs voluntarily dismissed her from the case pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.² According to Representative Majette's counsel, she has

¹ The Bipartisan Legal Advisory Group consists of the Speaker of the House, the Majority Leader, the Majority Whip, the Minority Leader and the Minority Whip. Pursuant to House Rule II(8), the Bipartisan Legal Advisory Group represents the institutional interests of the House in legal proceedings.

² Rule 41(a)(1) provides that such dismissal is "without prejudice" to the plaintiffs' right to re-assert the same or related claims.

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incurred legal expenses in excess of \$90,000 and "continues to incur modest legal fees related to monitoring the ongoing litigation."³

The Rules of the House of Representatives, adopted pursuant to the Rulemaking Clause of the U.S. Constitution, art. I, § 5, cl. 2, authorize Members to establish legal expense funds and accept contributions thereto that are "otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct." House Rule XXV(5)(a)(3)(E) (108th Congress) (copy attached). The Rules explicitly prohibit contributions to legal expense funds by registered lobbyists or foreign agents. *Id.* at XXV(5)(c)(3). The House Committee on Standards of Official Conduct has issued Legal Expense Fund Regulations (copy attached) which provide further detailed requirements for the establishment and use of such funds, including the requirement that each legal expense fund be approved by the Standards Committee, a limitation on contributions from any single source to \$5,000 per year, and the requirement that the funds provide publicly available quarterly reports containing information on contributions and expenditures.

Representative Majette proposes to establish a Legal Expense Fund in accordance with these House rules and regulations. She requests the Commission to confirm, in accordance with prior advisory opinions, that funds raised and spent by this Legal Expense Fund will not be "contributions" or "expenditures" within the meaning of the Federal Election Campaign Act ("FECA") and will not be subject to the limitations, prohibitions and disclosure requirements of FECA.

Prior Commission advisory opinions have determined, in a variety of circumstances, that funds raised and spent solely for legal expenses (apart from expenses relating to compliance with FECA itself) are outside the scope of FECA and therefore are not subject to its requirements.⁴ Several of these advisory opinions have involved legal expenses incurred in defending litigation relating to campaign and election matters. For example, in Advisory Opinion 1996-39, the Commission found that a Republican congressional candidate could establish a separate account to pay for legal expenses of litigation challenging the sufficiency of her nominating petitions to qualify for the primary. The Commission concluded that funds raised and spent for these expenses were outside the purview of FECA, citing prior opinions that had reached the same result where "individuals faced with preliminary legal actions contesting their access to the ballot needed to secure funds to pay for the costs associated with these disputes."⁵

³ Letter of G. Scott Rafshoon, Esq. to Federal Election Commission (Apr. 14, 2003) at 1.

⁴ See, e.g., Advisory Opinion 2000-40 (approving legal expense fund to defend civil litigation arising from a Member's official duties); Advisory Opinion 1983-21 (approving legal expense fund for a Member facing congressional ethics investigation); Advisory Opinion 1979-37 (approving legal expense fund for a Member facing both criminal and congressional ethics investigations).

⁵ See also Advisory Opinion 1983-37 (approving legal expense fund of a state party to defend against challenges to party rules relating to ballot access); Advisory Opinions 1982-35A and 35B

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While not denying that the Commission's prior advisory opinions involve requests that are indistinguishable factually from Representative Majette's, one commenter argues that the Commission should reach a different result here because of an intervening statutory change contained in the Bipartisan Campaign Reform Act ("BCRA").⁶ Specifically, the commenter contends that the Commission's prior advisory opinions were based solely on FECA's statutory definitions of "contribution" and "expenditure" as funds raised or spent "for the purpose of influencing any election for Federal office." See 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i) (2003). Although BCRA did not change these statutory definitions, the commenter points to BCRA's addition of a new statutory provision, codified at 2 U.S.C. § 441i, which provides in relevant part that a federal officeholder, candidate, or entity established or controlled by such officeholder or candidate may not solicit, receive or expend funds

in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

Id. § 441i(e)(1)(A) (emphasis added). Thus, while the funds raised and spent by Representative Majette's proposed Legal Expense Fund may not be for the purpose of influencing federal elections, the commenter contends that they nonetheless are "in connection with an election for Federal office" because (a) they are being used for a lawsuit which arises from election matters and (b) the relief sought by the plaintiffs in that lawsuit (invalidation of the federal election that Representative Majette won) would affect a federal election.

We respectfully disagree. We first note that the interpretation of the words "in connection with an election for Federal office," as with any statutory provision, must take place in the context of the overall statutory scheme.⁷ This is particularly true of the phrase "in connection with," which is "notable for its 'vagueness and pliability.'"⁸ No doubt a candidate or

(approving legal expense funds for candidates who wish to challenge party rules that impair their access to the ballot); Advisory Opinion 1981-13 (allowing a former Senator to raise funds outside the limitations of FECA to defend a defamation lawsuit brought by a former campaign aide of his election opponent).

⁶ Letter of Glen Shor to General Counsel of Federal Election Commission (May 12, 2003).

⁷ See *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.").

⁸ *United States v. Loney*, 219 F.3d 281, 283 (3d Cir. 2000) (quoting Fowler's Modern English Usage 172 (R.W. Burchfield ed., 3d ed. 1996)). See also *FEC v. Colorado Republican Federal Campaign Committee*, 59 F.3d 1015, 1021 (10th Cir. 1995) (noting that in FECA "the meaning of 'expenditures in connection with' is not perfectly clear . . ."), *vacated and remanded on other grounds*, 518 U.S. 604 (1996).

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officeholder who wrote and sold a book about past federal elections might be receiving funds in connection with a federal election in some loose sense, but this is obviously not the type of connection Congress meant when it enacted 2 U.S.C. § 441i(e)(1)(A).

It is not obvious, simply as a matter of ordinary usage, that the funds raised and expended by a legal expense fund such as that proposed by Representative Majette are "in connection with an election for Federal office." It would be more natural to describe such funds as "in connection with litigation" since—from the standpoint of the defendant—it is necessary to defend the lawsuit regardless of what it is about. Thus, in authorizing a former Senator to raise funds to defend a defamation suit brought by a former campaign aide of his election opponent, the Commission noted that "because the fundraising activity . . . is *exclusively connected with*, and strictly for the purpose of, *paying the costs of his legal defense*, such activity is outside the purview of the Act." Advisory Opinion 1981-13 (emphasis added). In short, the mere fact that a particular lawsuit arises out of or relates to federal campaign or election matters does not establish that funds raised or spent to defend that lawsuit are "in connection with an election for Federal office."

Moreover, long before the enactment of BCRA, federal law prohibited corporations and unions from making contributions and expenditures "in connection with" any federal election. 2 U.S.C. § 441b.⁹ See also *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 246 (1986) ("§ 441b was meant to proscribe expenditures in connection with an election."); Advisory Opinion 1981-35 ("Section 441b prohibits corporations from making contributions or expenditures in connection with any election to any Federal office."). While it is true that the Commission's advisory opinions on legal expense funds largely focus on the lack of any election-influencing aspect of these funds, the Commission also has repeatedly determined that corporations and unions may contribute to them, even where the underlying litigation relates to campaign or election activity.¹⁰ This determination cannot be squared with the commenter's conclusion that such contributions are "in connection with" a federal election.¹¹

⁹ Section 441b's definition of "contribution" or "expenditure" includes, but is not limited to, contributions and expenditures that satisfy the general statutory definition of those terms in § 431. Because the requirement that a "contribution" or "expenditure" must be "for the purpose of influencing any election for Federal office" appears only in Section 431, Section 441b expenditures or contributions are not defined solely by this requirement.

¹⁰ See Advisory Opinion 1996-39, Advisory Opinion 1983-21, Advisory Opinion 1982-35A and B, Advisory Opinion 1981-13.

¹¹ We note that while the commenter asserts that Representative Majette's Legal Expense Fund relates to litigation that "could directly determine the outcome of a Federal election," Letter of Glen Shor to General Counsel of Federal Election Commission at 4, this claim flies in the face of the House's exclusive constitutional authority to judge elections under art. I, § 5, cl. 1. See *Roudebush v. Hartke*, 405 U.S. 15, 18-19 (1972) (House and Senate have exclusive jurisdiction to judge their own elections and the courts are powerless to interfere with their determinations). The characterization of Representative Majette's legal expenses should not turn on the plaintiffs'

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There is also no evidence that Congress, in enacting BCRA, intended to change the treatment of legal expense funds. BCRA – and 2 U.S.C. § 441i in particular – was largely intended to address the issue of “soft money.”¹² While there is no formal or precise definition of “soft money,” the term is associated with large and unlimited contributions or expenditures, often by corporations or unions, which are thought to have the purpose or effect of influencing the political process to the benefit or detriment of a particular candidate or political party. Congress viewed soft money as a “loophole” used to circumvent the contribution and expenditure limitations of FECA.¹³

Legal expense funds do not present problems analogous to those associated with soft money. The expenses incurred by a defendant in a lawsuit (or the target of other legal proceedings) are essentially involuntary and beyond his or her control. As the Commission has remarked, “[i]n this situation [the defendant] has no choice but to defend itself or admit the violations alleged by the plaintiff.” Advisory Opinion 1980-4. There is simply no reasonable possibility that a legal expense fund set up to defray the costs of defending litigation will be used to circumvent the contribution and expenditure limitations of FECA.¹⁴

It may be argued that contributions to legal expense funds of Members of Congress, although they do not influence the political process, nonetheless provide a personal benefit to the recipients and therefore may corrupt or appear to corrupt the legislative process. However, the House has already addressed this concern by closely regulating such funds and imposing its own source and amount limitations, as well as disclosure requirements. We are aware of no evidence

decision to seek a remedy that is legally unavailable to them.

Moreover, in Advisory Opinion 1981-35, the Commission considered a proposed committee to be set up by Republican Representatives from California to receive and distribute funds relating to the congressional reapportionment process. Finding that “the committee’s possible participation in any lawsuit with respect to a Congressional reapportionment plan would not be in connection with a Federal election,” the Commission concluded that corporations could contribute to this committee. Thus, the mere fact that litigation could have an impact on federal elections is not sufficient to make its legal expense funds “in connection with” a federal election.

¹² Section 441i is, of course, entitled “Soft money of political parties.”

¹³ See, e.g., 148 Cong. Rec. S2138 (daily ed. Mar. 20, 2002) (statement of Sen. McCain) (“Closing the [soft money] loophole is crucial to prevent evasion of the new Federal rules”).

¹⁴ A different situation may be presented, however, if a legal expense fund is established to support an offensive legal strategy designed to provide a political advantage to a candidate or officeholder. Thus, in Advisory Opinion 1980-57, the Commission determined that FECA’s limitations and prohibitions would apply to funds raised and spent to support a Representative’s litigation to knock an opponent off the ballot.

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to suggest that these regulations have been inadequate, and we note that the commenter does not cite any such evidence, either in the voluminous legislative history of BCRA or elsewhere.

Furthermore, any personal benefit provided by a legal expense fund would apply equally to all legal expense funds, not merely to those which happen to relate to litigation arising out of campaign or election matters. Thus, any personal (as opposed to political) benefit that Members may receive from contributions to legal expense funds is most appropriately considered under the Commission's regulations governing "personal use," as the Commission has in fact recognized in promulgating 11 C.F.R. § 113.1(g). This regulation provides that third party payments for certain expenses that constitute personal use are considered to be "irrespective of candidacy" and therefore exempt from the regulatory requirements of FECA. Among those payments considered to be "irrespective of candidacy" is a "donation to a legal expense trust fund established in accordance with the rules of the United States Senate or the United States House of Representatives." *Id.* § 113.1(g)(6)(i).¹⁵ This regulation reflects the Commission's judgment that House and Senate rules adequately regulate the personal use aspect of legal expense funds. Nothing in the language or legislative history of BCRA indicates that Congress intended to overturn that judgment.

On the contrary, the fact that BCRA and its legislative history are silent on the subject of legal expense funds strongly suggests that Congress was satisfied with the existing treatment of such funds.¹⁶ Members of Congress are very familiar with legal expense funds, which are described and explained in the House Ethics Manual, an important publication distributed to all Members and staff. House Ethics Manual 49-50 (1992). Numerous Members have additional familiarity with legal expense funds from having served on the Committee on Standards, which is responsible for reviewing all such legal expense funds. Finally, several Members currently have, or have had in the past, legal expense funds to defray the costs of defending various types of legal proceedings. Given Congress' undoubted familiarity with this subject, the absence of any explicit discussion of the subject in BCRA itself or its legislative history supports the

¹⁵ For this reason, the commenter is wrong when he suggests that because legal expenses can be paid from campaign funds (when those expenses relate to a candidacy), such expenses must necessarily be "in connection with an election for Federal office." Letter of Glen Shor to General Counsel of Federal Election Commission at 4-5. Not only is it logically possible for a contribution to be related to a candidacy but not "in connection with an election for Federal office," but the Commission's own regulation explicitly defines *any* contribution to a legal expense fund established in accordance with House or Senate rules to be "irrespective of candidacy."

¹⁶ If Congress had wanted to cover legal expense funds, it could easily have done so by including them within the definition of "Federal election activity." It is not contended, however, that either the statutory or regulatory definitions of "Federal election activity," 2 U.S.C. § 431(20) and 11 C.F.R. § 100.24 respectively, would cover such funds.

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conclusion that no change was intended.¹⁷ Nor should the Commission assume, absent a clear congressional directive, that Congress intended it to alter the well-established rules governing legal expense funds which have been adopted by both the House and Senate pursuant to their constitutional rulemaking powers.

Finally, we urge the Commission not to lose sight of the policy considerations which support treating legal expense funds outside the requirements of FECA. The Commission recognized these considerations more than two decades ago in a matter strikingly similar to the situation presented by Representative Majette's advisory opinion request. In the earlier matter a sitting President's election campaign committee was sued by supporters of his primary opponent, who alleged various statutory and constitutional violations tended to "devalue and competitively disadvantage" the plaintiffs' political support. Advisory Opinion 1980-4. In concluding that donations to support the campaign committee's legal defense (in this case donated legal services) were not covered by FECA, the Commission stated

to characterize the donated legal services as contributions in this case would force the Committee to charge the legal expenses to their expenditure limit . . . [and] could, in turn, lead to the situation where any committee similarly situated would have to use up its expenditure limit (and perhaps its funds as well if donated legal services were not available) in defending law suits, rather than campaigning for the Presidency.

Id.

Put another way, if legal expense donations were subject to FECA's requirements and could only be paid with "hard money," supporters of candidates would have a significant incentive to maximize the legal expenses of their political opponents, thereby draining the latter's resources available for future campaigns. In Representative Majette's case, for example, the plaintiffs would be able to gain a competitive advantage for possible future campaigns by filing claims against her, submitting motions to which she would be required to respond, or by serving on her or her staff burdensome discovery requests. Thus, the Commission's policy concerns remain a significant reason for adhering to its prior precedent in this area.

For these reasons the Bipartisan Legal Advisory Group submits that the Commission should adhere to its precedent with respect to legal expense funds.

¹⁷ See *Dep't of Commerce v. United States House of Representatives*, 525 U.S. 316, 342-43 (1999) (silence in the legislative debates and history regarding "a change [that] would profoundly affect Congress" indicates that no such change was intended.).

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We appreciate the opportunity to submit this comment.

Sincerely



Geraldine R. Gennet
General Counsel

cc: The Honorable J. Dennis Hastert
The Honorable Tom DeLay
The Honorable Roy Blunt
The Honorable Nancy Pelosi
The Honorable Steny H. Hoyer

RULES
of the
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS



PREPARED BY

Jeff Trandahl

Clerk of the House of Representatives

JANUARY 7, 2003

RULES OF THE

for that purpose on the last legislative day of the week and making cumulative lists of such names available each day for public inspection in an appropriate office of the House.

14. (a) In this Code of Official Conduct, the term "officer or employee of the House" means an individual whose compensation is disbursed by the Chief Administrative Officer.

(b) An individual whose services are compensated by the House pursuant to a consultant contract shall be considered an employee of the House for purposes of clauses 1, 2, 3, 4, 8, 9, and 13 of this rule. An individual whose services are compensated by the House pursuant to a consultant contract may not lobby the contracting committee or the members or staff of the contracting committee on any matter. Such an individual may lobby other Members, Delegates, or the Resident Commissioner or staff of the House on matters outside the jurisdiction of the contracting committee.

RULE XXIV

LIMITATIONS ON USE OF OFFICIAL FUNDS
Limitations on use of official and unofficial accounts

1. A Member, Delegate, or Resident Commissioner may not maintain, or have maintained for his use, an unofficial office account. Funds may not be paid into an unofficial office account.

2. Notwithstanding any other provision of this rule, if an amount from the Official Expenses Allowance of a Member, Delegate, or Resident Commissioner is paid into the House Recording Studio revolving fund for telecommunications satellite services, the Member, Delegate, or Resident Commissioner may accept reimbursement from nonpolitical entities in that amount for transmission to the Clerk for credit to the Official Expenses Allowance.

3. In this rule the term "unofficial office account" means an account or repository in which funds are received for the purpose of defraying otherwise unreimbursed expenses allowable under section 162(a) of the Internal Revenue Code of 1986 as ordinary and necessary in the operation of a congressional office, and includes a newsletter fund referred to in section 527(a) of the Internal Revenue Code of 1986.

Limitations on use of the frank

4. A Member, Delegate, or Resident Commissioner shall mail franked mail under section 3210(d) of title 39, United States Code at the most economical rate of postage practicable.

5. Before making a mass mailing, a Member, Delegate, or Resident Commissioner shall submit a sample or description of the mail matter involved to the House Commission on Congressional Mailing Standards for an advisory opinion as to whether the proposed mailing is in compliance with applicable provisions of law, rule, or regulation.

6. A mass mailing that is otherwise frankable by a Member, Delegate, or Resident Commissioner under the provisions of section 3210(e) of title 39, United States Code, is not frankable unless the cost of preparing and printing it is defrayed exclusively from funds made available in an appropriation Act.

7. A Member, Delegate, or Resident Commissioner may not send a mass mailing outside the congressional district from which he was elected.

8. In the case of a Member, Delegate, or Resident Commissioner, a mass mailing is not frankable under section 3210 of title 39, United States Code, when it is postmarked less than 60 days before the date of a primary or general election (whether regular, special, or runoff) in which he is a candidate for public office. If the mail matter is of a type that is not customarily postmarked, the date on which it would have been postmarked, if it were of a type customarily postmarked, applies.

9. In this rule the term "mass mailing" means, with respect to a session of Congress, a mailing of newsletters or other pieces of mail with substantially identical content (whether such pieces of mail are deposited singly or in bulk, or at the same time or different times), totaling more than 500 pieces of mail in that session, except that such term does not include a mailing—

(a) of matter in direct response to a communication from a person to whom the matter is mailed;

(b) from a Member, Delegate, or Resident Commissioner to other Members, Delegates, the Resident Commissioner, or Senators, or to Federal, State, or local government officials; or

(c) of a news release to the communications media.

Prohibition on use of funds by Members not elected to succeeding Congress

10. Funds from the applicable accounts described in clause 1(1)(1) of rule X, including funds from committee expense resolutions, and funds in any local currencies owned by the United States may not be made available for travel by a Member, Delegate, Resident Commissioner, or Senator after the date of a general election in which he was not elected to the succeeding Congress or, in the case of a Member, Delegate, or Resident Commissioner who is not a candidate in a general election, after the earlier of the date of such general election or the adjournment sine die of the last regular session of the Congress.

RULE XXV

LIMITATIONS ON OUTSIDE EARNED INCOME AND ACCEPTANCE OF GIFTS
Outside earned income; honoraria

1. (a) Except as provided by paragraph (b), a Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(1) have outside earned income attributable to a calendar year that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year; or

(2) receive any honorarium, except that an officer or employee of the House who is paid at a rate less than 120 percent of the minimum rate of basic pay for GS-15 of the General Schedule may receive an honorarium unless the subject matter is directly related to the official duties of the individual, the payment is made because of the status of the individual with the House, or the person offering the honorarium has interests that may be substantially affected by the performance or nonperformance of the official duties of the individual.

(b) In the case of an individual who becomes a Member, Delegate, Resident Commissioner, officer, or employee of the House, such individual may not have outside earned income attributable to the portion of a calendar year that occurs after such individual becomes a Member, Delegate, Resident Commissioner, officer, or employee that exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under section 5313 of title 5, United States Code, as of January 1 of that calendar year multiplied by a fraction, the numerator of which is the number of days the individual is a Member, Delegate, Resident Commissioner, officer, or employee during that calendar year and the denominator of which is 365.

(c) A payment in lieu of an honorarium that is made to a charitable organization on behalf of a Member, Delegate, Resident Commissioner, officer, or employee of the House may not be received by that Member, Delegate, Resident Commissioner, officer, or employee. Such a payment may not exceed \$2,000 or be made to a charitable organization from which the Member, Delegate, Resident Commissioner, officer, or employee or a parent, sibling, spouse, child, or dependent relative of the Member, Delegate, Resident Commissioner, officer, or employee, derives a financial benefit.

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not—

(a) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services involving a fiduciary relationship except for the practice of medicine;

(b) permit his name to be used by such a firm, partnership, association, corporation, or other entity;

(c) receive compensation for practicing a profession that involves a fiduciary relationship except for the practice of medicine;

(d) serve for compensation as an officer or member of the board of an as-

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sociation, corporation, or other entity; or

(e) receive compensation for teaching, without the prior notification and approval of the Committee on Standards of Official Conduct.

Copyright royalties

3. (a) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive an advance payment on copyright royalties. This paragraph does not prohibit a literary agent, researcher, or other individual (other than an individual employed by the House or a relative of a Member, Delegate, Resident Commissioner, officer, or employee) working on behalf of a Member, Delegate, Resident Commissioner, officer, or employee with respect to a publication from receiving an advance payment of a copyright royalty directly from a publisher and solely for the benefit of that literary agent, researcher, or other individual.

(b) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive copyright royalties under a contract entered into on or after January 1, 1996, unless that contract is first approved by the Committee on Standards of Official Conduct as complying with the requirement of clause 4(d)(1)(E) (that royalties are received from an established publisher under usual and customary contractual terms).

Definitions

4. (a)(1) In this rule, except as provided in subparagraph (2), the term "officer or employee of the House" means an individual (other than a Member, Delegate, or Resident Commissioner) whose pay is disbursed by the Chief Administrative Officer, who is paid at a rate equal to or greater than 120 percent of the minimum rate of basic pay for GS-15 of the General Schedule, and who is so employed for more than 90 days in a calendar year.

(2)(A) When used with respect to an honorarium, the term "officer or employee of the House" means an individual (other than a Member, Delegate, or Resident Commissioner) whose salary is disbursed by the Chief Administrative Officer.

(B) When used in clause 5 of this rule, the terms "officer" and "employee" have the same meanings as in rule XXIII.

(b) In this rule the term "honorarium" means a payment of money or a thing of value for an appearance, speech, or article (including a series of appearances, speeches, or articles) by a Member, Delegate, Resident Commissioner, officer, or employee of the House, excluding any actual and necessary travel expenses incurred by that Member, Delegate, Resident Commissioner, officer, or employee (and one relative) to the extent that such expenses are paid or reimbursed by any other person. The amount otherwise determined shall be reduced by the amount of any such expenses to the ex-

tent that such expenses are not so paid or reimbursed.

(c) In this rule the term "travel expenses" means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a relative of such Member, Delegate, Resident Commissioner, officer, or employee, the cost of transportation, and the cost of lodging and meals while away from his residence or principal place of employment.

(d)(1) In this rule the term "outside earned income" means, with respect to a Member, Delegate, Resident Commissioner, officer, or employee of the House, wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered, but does not include —

(A) the salary of a Member, Delegate, Resident Commissioner, officer, or employee;

(B) any compensation derived by a Member, Delegate, Resident Commissioner, officer, or employee of the House for personal services actually rendered before the adoption of this rule or before he became a Member, Delegate, Resident Commissioner, officer, or employee;

(C) any amount paid by, or on behalf of, a Member, Delegate, Resident Commissioner, officer, or employee of the House to a tax-qualified pension, profit-sharing, or stock bonus plan and received by him from such a plan;

(D) in the case of a Member, Delegate, Resident Commissioner, officer, or employee of the House engaged in a trade or business in which he or his family holds a controlling interest and in which both personal services and capital are income-producing factors, any amount received by the Member, Delegate, Resident Commissioner, officer, or employee, so long as the personal services actually rendered by him in the trade or business do not generate a significant amount of income; or

(E) copyright royalties received from established publishers under usual and customary contractual terms; and

(2) outside earned income shall be determined without regard to community property law.

(c) In this rule the term "charitable organization" means an organization described in section 170(c) of the Internal Revenue Code of 1986.

Gifts

5. (a)(1)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not knowingly accept a gift except as provided in this clause.

(B) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept a gift (other than cash or cash equivalent) that the Member, Delegate, Resident Commissioner, officer, or employee reasonably and in good faith believes to have a value of less than \$50 and a cumulative

value from one source during a calendar year of less than \$100. A gift having a value of less than \$10 does not count toward the \$100 annual limit. The value of perishable food sent to an office shall be allocated among the individual recipients and not to the Member, Delegate, or Resident Commissioner. Formal recordkeeping is not required by this subdivision, but a Member, Delegate, Resident Commissioner, officer, or employee of the House shall make a good faith effort to comply with this subdivision.

(2)(A) In this clause the term "gift" means a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(B)(1) A gift to a family member of a Member, Delegate, Resident Commissioner, officer, or employee of the House, or a gift to any other individual based on that individual's relationship with the Member, Delegate, Resident Commissioner, officer, or employee, shall be considered a gift to the Member, Delegate, Resident Commissioner, officer, or employee if it is given with the knowledge and acquiescence of the Member, Delegate, Resident Commissioner, officer, or employee and the Member, Delegate, Resident Commissioner, officer, or employee has reason to believe the gift was given because of his official position.

(1) If food or refreshment is provided at the same time and place to both a Member, Delegate, Resident Commissioner, officer, or employee of the House and the spouse or dependent thereof, only the food or refreshment provided to the Member, Delegate, Resident Commissioner, officer, or employee shall be treated as a gift for purposes of this clause.

(3) The restrictions in subparagraph (1) do not apply to the following:

(A) Anything for which the Member, Delegate, Resident Commissioner, officer, or employee of the House pays the market value, or does not use and promptly returns to the donor.

(B) A contribution, as defined in section 301(6) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) that is lawfully made under that Act, a lawful contribution for election to a State or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(a) of the Internal Revenue Code of 1986.

(C) A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (2 U.S.C. App. 109(16)).

(D)(1) Anything provided by an individual on the basis of a personal friendship unless the Member, Delegate, Resident Commissioner, officer, or employee of the House has reason

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to believe that, under the circumstances, the gift was provided because of his official position and not because of the personal friendship.

(ii) In determining whether a gift is provided on the basis of personal friendship, the Member, Delegate, Resident Commissioner, officer, or employee of the House shall consider the circumstances under which the gift was offered, such as:

(I) The history of his relationship with the individual giving the gift, including any previous exchange of gifts between them.

(II) Whether to his actual knowledge the individual who gave the gift personally paid for the gift, or sought a tax deduction or business reimbursement for the gift.

(III) Whether to his actual knowledge the individual who gave the gift also gave the same or similar gifts to other Members, Delegates, the Resident Commissioners, officers, or employees of the House.

(E) Except as provided in paragraph (c)(3), a contribution or other payment to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct.

(F) A gift from another Member, Delegate, Resident Commissioner, officer, or employee of the House or Senate.

(G) Food, refreshments, lodging, transportation, and other benefits—

(i) resulting from the outside business or employment activities of the Member, Delegate, Resident Commissioner, officer, or employee of the House (or other outside activities that are not connected to his duties as an officeholder), or of his spouse, if such benefits have not been offered or enhanced because of his official position and are customarily provided to others in similar circumstances;

(ii) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(iii) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fund-raising or campaign event sponsored by such organization.

(H) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(I) Informational materials that are sent to the office of the Member, Delegate, Resident Commissioner, officer, or employee of the House in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(J) Awards or prizes that are given to competitors in contests or events open to the public, including random drawings.

(K) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

(L) Training (including food and refreshments furnished to all attendees as an integral part of the training) if such training is in the interest of the House.

(M) Bequests, inheritances, and other transfers at death.

(N) An item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.

(O) Anything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(P) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(Q) Free attendance at a widely attended event permitted under subparagraph (4).

(R) Opportunities and benefits that are—

(i) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;

(ii) offered to members of a group or class in which membership is unrelated to congressional employment;

(iii) offered to members of an organization, such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;

(iv) offered to a group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(v) in the form of loans from banks and other financial institutions on terms generally available to the public; or

(vi) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(S) A plaque, trophy, or other item that is substantially commemorative in nature and that is intended for presentation.

(T) Anything for which, in an unusual case, a waiver is granted by the Committee on Standards of Official Conduct.

(U) Food or refreshments of a nominal value offered other than as a part of a meal.

(V) Donations of products from the district or State that the Member, Delegate, or Resident Commissioner represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any single recipient.

(W) An item of nominal value such as a greeting card, baseball cap, or a T-shirt.

(4)(A) A Member, Delegate, Resident Commissioner, officer, or employee of the House may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—

(i) the Member, Delegate, Resident Commissioner, officer, or employee of the House participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to his official position; or

(ii) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, Delegate, Resident Commissioner, officer, or employee of the House.

(B) A Member, Delegate, Resident Commissioner, officer, or employee of the House who attends an event described in subdivision (A) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual.

(C) A Member, Delegate, Resident Commissioner, officer, or employee of the House, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event unless—

(i) all of the net proceeds of the event are for the benefit of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code;

(ii) reimbursement for the transportation and lodging in connection with the event is paid by such organization; and

(iii) the offer of free attendance at the event is made by such organization.

(D) In this paragraph the term "free attendance" may include waiver of all or part of a conference or other fee, the provision of local transportation, or

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the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(5) A Member, Delegate, Resident Commissioner, officer, or employee of the House may not accept a gift the value of which exceeds \$250 on the basis of the personal friendship exception in subparagraph (3)(D) unless the Committee on Standards of Official Conduct issues a written determination that such exception applies. A determination under this subparagraph is not required for gifts given on the basis of the family relationship exception in subparagraph (3)(C).

(6) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

(b)(1)(A) A reimbursement (including payment in kind) to a Member, Delegate, Resident Commissioner, officer, or employee of the House from a private source other than a registered lobbyist or agent of a foreign principal for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, factfinding trip, or similar event in connection with his duties as an officeholder shall be considered as a reimbursement to the House and not a gift prohibited by this clause, if the Member, Delegate, Resident Commissioner, officer, or employee—

(1) in the case of an employee, receives advance authorization, from the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works, to accept reimbursement; and

(11) discloses the expenses reimbursed or to be reimbursed and the authorization to the Clerk within 30 days after the travel is completed.

(B) For purposes of subdivision (A), events, the activities of which are substantially recreational in nature, are not considered to be in connection with the duties of a Member, Delegate, Resident Commissioner, officer, or employee of the House as an officeholder.

(2) Each advance authorization to accept reimbursement shall be signed by the Member, Delegate, Resident Commissioner, or officer of the House under whose direct supervision the employee works and shall include—

(A) the name of the employee;

(B) the name of the person who will make the reimbursement;

(C) the time, place, and purpose of the travel; and

(D) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(3) Each disclosure made under subparagraph (1)(A) of expenses reimbursed or to be reimbursed shall be signed by the Member, Delegate, Resident Commissioner, or officer (in the case of travel by that Member, Delegate, Resident Commissioner, or officer) or by the Member, Delegate, Resident Commissioner, or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

(A) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;

(B) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;

(C) a good faith estimate of total meal expenses reimbursed or to be reimbursed;

(D) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;

(E) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in subparagraph (4); and

(F) in the case of a reimbursement to a Member, Delegate, Resident Commissioner, or officer, a determination that the travel was in connection with his duties as an officeholder and would not create the appearance that the Member, Delegate, Resident Commissioner, or officer is using public office for private gain.

(4) In this paragraph the term "necessary transportation, lodging, and related expenses"—

(A) includes reasonable expenses that are necessary for travel for a period not exceeding four days within the United States or seven days exclusive of travel time outside of the United States unless approved in advance by the Committee on Standards of Official Conduct;

(B) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in subdivision (A);

(C) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as an integral part of the event, except for activities or entertainment otherwise permissible under this clause; and

(D) may include travel expenses incurred on behalf of either the spouse or a child of the Member, Delegate, Resident Commissioner, officer, or employee.

(5) The Clerk shall make available to the public all advance authorizations and disclosures of reimbursement filed under subparagraph (1) as soon as possible after they are received.

(c) A gift prohibited by paragraph (a)(1) includes the following:

(1) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is

maintained or controlled by a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(2) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, Delegate, Resident Commissioner, officer, or employee of the House (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by paragraph (d).

(3) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, Delegate, Resident Commissioner, officer, or employee of the House.

(4) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, Delegates, the Resident Commissioner, officers, or employees of the House.

(d)(1) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, Delegate, Resident Commissioner, officer, or employee of the House are not considered a gift under this clause if it is reported as provided in subparagraph (2).

(2) A Member, Delegate, Resident Commissioner, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of an honorarium described in subparagraph (1) shall report within 30 days after such designation or recommendation to the Clerk—

(A) the name and address of the registered lobbyist who is making the contribution in lieu of an honorarium;

(B) the date and amount of the contribution; and

(C) the name and address of the charitable organization designated or recommended by the Member, Delegate, or Resident Commissioner.

The Clerk shall make public information received under this subparagraph as soon as possible after it is received.

(e) In this clause—

(1) the term "registered lobbyist" means a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute;

(2) the term "agent of a foreign principal" means an agent of a foreign principal registered under the Foreign Agents Registration Act; and

(3) the terms "officer" and "employee" have the same meanings as in rule XXIII.

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(f) All the provisions of this clause shall be interpreted and enforced solely by the Committee on Standards of Official Conduct. The Committee on Standards of Official Conduct is authorized to issue guidance on any matter contained in this clause.

Claims against the Government

6. A person may not be an officer or employee of the House, or continue in its employment, if he acts as an agent for the prosecution of a claim against the Government or if he is interested in such claim, except as an original claimant or in the proper discharge of official duties.

RULE XXVI

FINANCIAL DISCLOSURE

1. The Clerk shall send a copy of each report filed with the Clerk under title I of the Ethics in Government Act of 1978 within the seven-day period beginning on the date on which the report is filed to the Committee on Standards of Official Conduct. By August 1 of each year, the Clerk shall compile all such reports sent to him by Members within the period beginning on January 1 and ending on June 15 of each year and have them printed as a House document, which shall be made available to the public.

2. For the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House.

Pertinent provisions of Title I of the Ethics in Government Act of 1978 (5 U.S.C. App. 6 §§ 101-111) follow:

TITLE I—FINANCIAL DISCLOSURE
REQUIREMENTS OF FEDERAL PERSONNEL*Persons Required to File*

SEC. 101. (a) Within thirty days of assuming the position of an officer or employee described in subsection (f), an individual shall file a report containing the information described in section 102(b) unless the individual has left another position described in subsection (f) within thirty days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position. * * *

(c) Within thirty days of becoming a candidate as defined in section 301 of the Federal Campaign Act of 1971, in a calendar year for nomination or election to the Office of President, Vice President, or Member of Congress, or on or before May 15 of that calendar year, whichever is later, but in no event later than 30 days before the election, and on or before May 15 of each successive year an individual continues to be a candidate, an individual other than an incumbent President, Vice President, or Member of Congress shall file a report containing the information described in section 102(b). Notwithstanding the preceding sentence, in any calendar year in which an indi-

vidual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

(d) Any individual who is an officer or employee described in subsection (f) during any calendar year and performs the duties of his position or office for a period in excess of sixty days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 102(a).

(e) Any individual who occupies a position described in subsection (f) shall, on or before the thirtieth day after termination of employment in such position, file a report containing the information described in section 102(a) covering the preceding calendar year if the report required by subsection (d) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in another position described in subsection (f).

(f) The officers and employees referred to in subsections (a), (d), and (e) are— * * *

(9) a Member of Congress as defined under section 109(12);

(10) an officer or employee of the Congress as defined under section 109(13); * * *

(g)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the supervising ethics office for each branch, but the total of such extensions shall not exceed ninety days. * * *

(h) The provisions of subsections (a), (b), and (c) shall not apply to an individual who, as determined by the designated agency ethics official or Secretary concerned (or in the case of a Presidential appointee under subsection (b), the Director of the Office of Government Ethics), the congressional ethics committees, or the Judicial Conference, is not reasonably expected to perform the duties of his office or position for more than sixty days in a calendar year, except that if such individual performs the duties of his office or position for more than sixty days in a calendar year—

(1) the report required by subsections (a) and (b) shall be filed within fifteen days of the sixtieth day, and

(2) the report required by subsection (c) shall be filed as provided in such subsection.

(i) The supervising ethics office for each branch may grant a publicly available request for a waiver of any reporting requirement under this section for an individual who is expected to perform or has performed the duties of his office or position less than one hundred and thirty days in a calendar

year, but only if the supervising ethics office determines that—

(1) such individual is not a full-time employee of the Government.

(2) such individual is able to provide services specially needed by the Government.

(3) it is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) public financial disclosure by such individual is not necessary in the circumstances.

Contents of Reports

SEC. 102. (a) Each report filed pursuant to section 101 (d) and (e) shall include a full and complete statement with respect to the following:

(1)(A) The source, type, and amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), and the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office, on a confidential basis, a corresponding list of recipients of all such payments, together with the dates and amounts of such payments.

(B) The source and type of income which consists of dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds \$200 in amount or value, and an indication of which of the following categories the amount or value of such item of income is within:

(i) not more than \$1,000,

(ii) greater than \$1,000 but not more than \$2,500,

(iii) greater than \$2,500 but not more than \$5,000,

(iv) greater than \$5,000 but not more than \$15,000,

(v) greater than \$15,000 but not more than \$50,000,

(vi) greater than \$50,000 but not more than \$100,000,

(vii) greater than \$100,000 but not more than \$1,000,000,

(viii) greater than \$1,000,000 but not more than \$5,000,000, or

(ix) greater than \$5,000,000.

(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(6) of title 5, United States Code, or \$250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual

Legal Expense Fund Regulations

MEMORANDUM TO ALL MEMBERS, OFFICERS, AND EMPLOYEES¹⁰⁸

From: Committee on Standards of Official Conduct

Nancy L. Johnson, Chairman

Jim McDermott, Ranking Democratic Member

Date: June 10, 1996

The new gift rule exempts "a contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct," as long as the contribution is not from a registered lobbyist or an agent of a foreign principal (House Rule 26, clause 5(a)(3)(E)). In light of this new rule, and pursuant to its authority thereunder, the Committee hereby issues regulations explaining its "restrictions and disclosure requirements" for legal expense funds. The regulations set forth below supersede the Committee's prior policies under the old gift rule¹⁰⁹ and take effect as of July 1, 1996. The prior policies remain in effect until that date.

Legal Expense Fund Regulations

1. A Member, officer, or employee who wishes to solicit and/or receive donations, in cash or in kind, to pay legal expenses shall obtain the prior written permission of the Committee on Standards of Official Conduct.¹¹⁰
2. The Committee shall grant permission to establish a Legal Expense Fund only where the legal expenses arise in connection with: the individual's candidacy for or election to federal office; the individual's official duties or position in Congress (including legal expenses incurred in connection with an amicus brief filed in a Member's official capacity, a civil action by a Member challenging the validity of a law or federal regulation, or a matter before the Committee on Standards of Official Conduct); a criminal prosecution; or a civil matter bearing on the individual's reputation or fitness for office.
3. The Committee shall not grant permission to establish a Legal Expense Fund where the legal expenses arise in connection with a matter that is primarily personal in nature (e.g., a matrimonial action).
4. A Member, officer, or employee may accept pro bono legal assistance without limit to file an amicus brief in his or her capacity as a Member of Congress; to bring a civil action challenging the validity of any federal law or regulation; or to bring a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature. Pro bono legal assistance for other purposes shall be deemed a contribution subject to the restrictions of these regulations.
5. A Legal Expense Fund shall be set up as a trust, administered by an independent trustee, who shall oversee fund raising.

6. The trustee shall not have any family, business, or employment relationship with the trust's beneficiary.

7. Trust funds shall be used only for legal expenses (and expenses incurred in soliciting for and administering the trust), except that any excess funds shall be returned to contributors. Under no circumstances may the beneficiary of a Legal Expense Fund convert the funds to any other purpose.

8. A Legal Expense Fund shall not accept more than \$5,000 in a calendar year from any individual or organization.

9. A Legal Expense Fund shall not accept any contribution from a registered lobbyist or an agent of a foreign principal.

10. Other than as specifically barred by law or regulation, a Legal Expense Fund may accept contributions from any individual or organization, including a corporation, labor union, or political action committee (PAC).

11. No contribution shall be solicited for or accepted by a Legal Expense Fund prior to the Committee's written approval of the completed trust document (including the name of the trustee). No amendment of the trust document is effective, and no successor or substitute trustee may be appointed, without the Committee's written approval.

12. Within one week of the Committee's approval of the trust document, the beneficiary shall file a copy of the trust document with the Legislative Resource Center (B-106 Cannon House Office Building) for public disclosure.

13. The beneficiary of a Legal Expense Fund shall report to the Committee on a quarterly basis, with a copy filed for public disclosure at the Legislative Resource Center:

a) any donation to the Fund from a corporation or labor union;

b) any contribution (or group of contributions) exceeding \$250 in a calendar year from any other single source; and

c) any expenditure from the Fund exceeding \$250 in a calendar year.

The reports shall state the full name and street address of each donor, contributor or recipient required to be disclosed. Beginning October 30, 1996, these reports shall be due as follows:

Reporting Period Due Date

January 1 -- March 31 April 30

April 1 -- June 30 July 30

July 1 -- September 30 October 30

October 1 – December 31 January 30

14. Any Member or employee who established a Legal Expense Fund prior to July 1, 1996 shall make any necessary modifications to the trust document to bring it into compliance with these regulations and shall disclose the trust document with his or her first quarterly report of the 105th Congress on January 30, 1997. Reports of receipts and expenditures shall be due beginning October 30, 1996, as stated in paragraph 13, above.

Use of Campaign Funds for Legal Expenses

This Committee has stated (in the 1992 *Ethics Manual*) that Members may use campaign funds to defend legal actions arising out of their campaign, election, or the performance of their official duties. More recently, however, the Federal Election Commission (FEC) issued regulations defining impermissible personal uses of campaign funds, including using campaign funds for certain legal expenses. Any Member contemplating the use of campaign funds for the direct payment of legal expenses or for contribution to a legal expense fund should first contact the FEC.

(B) which is conducted for a purpose comparable to the purpose stated in section 2451 of this title, and

(C) which is specifically approved by the Director of the United States Information Agency for purposes of this section;

but the Congress does not consent to the acceptance by any Federal employee of any portion of any such grant or other form of assistance which provides assistance with respect to any expenses incurred by or for any member of the family or household of such Federal employee.

(2) For purposes of this section, the term "Federal employee" means any employee as defined in subparagraphs (A) through (F) of section 7342(a)(1) of Title 5, but does not include a person described in subparagraph (G) of such section.

(b) Foreign grants and other assistance not gifts for purposes of section 7342 of Title 5

The grants and other forms of assistance with respect to which the consent of Congress is given in subsection (a) of this section shall not constitute gifts for purposes of section 7342 of Title 5.

(c) Regulations

The Director of the United States Information Agency is authorized to promulgate regulations for purposes of this section.

¹⁰⁸ These regulations have been updated in several respects, including to reflect certain Committee policies established after the regulations were originally issued, and the re-numbering of the House Rules that occurred at the beginning of the 106th Congress.

¹⁰⁹ See *House Ethics Manual*, 102d Cong., 2d Sess. 49-50 (1992).

¹¹⁰ Permission is not required to solicit and/or receive a donation in any amount from a relative or a donation of up to \$250 from a personal friend.

¹¹¹ This memorandum has been updated in several respects, including to reflect the re-numbering of the House Rules that occurred at the beginning of the 106th Congress.

¹¹² One or more loans or claimed loans were at issue in several Committee proceedings, including *In the Matter of Representative James C. Wright, Jr.* (Committee Statement of April 13, 1989, pp. 82-83), and *In the Matter of Representative Charles H. Wilson of California* (H.R. Rep. No. 930, 96th Cong., 2d Sess., p. 4 (1980)).

¹¹³ The established nature of this standard is also indicated by the fact that according to financial disclosures, a number of Members and staff have loans from individuals or entities that are not financial institutions.

ETHICS MANUAL FOR MEMBERS,
OFFICERS, AND EMPLOYEES OF THE
U.S. HOUSE OF REPRESENTATIVES

THE COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

102d Congress, 2d Session



U.S. GOVERNMENT PRINTING OFFICE
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the Code of Official Conduct was to prevent Members from "cashing in" on their official positions in Congress:

In the age of computerized mass mailings, it is unnecessary for people to gather together in a common place on a particular date to constitute a "fund-raising event."

* * * *

A major thrust of the provisions contained in the new House Rules adopted March 2, 1977, was to severely limit the potential for Members to "cash in" on their positions of influence for personal gain. Therefore, a limitation on outside earned income was proposed and adopted. A proposal to abolish unofficial office accounts was offered and adopted. A proposal to prohibit the conversion of political funds to personal use was adopted. And the proposal discussed above to treat all proceeds from fund-raising events as campaign contributions was also adopted. Therefore, it would appear that a proposal to solicit funds for personal use would be contrary to the "spirit" of the House Rules adopted pursuant to H. Res. 287.⁷⁴

The Select Committee on Ethics also found that a Member may not accept for unrestricted personal use the proceeds of a fundraiser conducted by a group independent of the Member: "[I]t is irrelevant whether the Member himself solicits these funds, or whether the Member accepts funds for personal use that are solicited on his behalf by an independent committee."⁷⁵

⁷⁴HOUSE SELECT COMM. ON ETHICS, Advisory Opinion No. 4 (Apr. 6, 1977), reprinted in FINAL REPORT, H. REP. NO. 95-1837, *supra* note 18, app. at 61-62, and at the end of Chapter 8 of this MANUAL. See also House Rule 43, cl. 2 (on adhering to the spirit as well as the letter of House rules).

⁷⁵HOUSE SELECT COMM. ON ETHICS, Advisory Opinion No. 11 (May 11, 1977), reprinted in FINAL REPORT, H. REP. NO. 95-1837, *supra* note 18, app. at 76-77, and at the end of Chapter 8 of this MANUAL.

Gifts and Travel

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LEGAL DEFENSE FUNDS

The Committee on Standards has determined that Members may use campaign funds to defend legal actions arising out of their campaign, election, or the performance of their official duties.⁷⁶ The Committee deems the protection of a Member's reputation and presumption of innocence to be a valid political purpose. These funds remain campaign contributions, however, subject to all the restrictions on other campaign contributions, including the reporting requirements, contribution limits, and prohibitions on corporate, labor union, and government contractor contributions.

Alternatively, a Member, officer, or employee may choose to set up a "legal defense fund" independent of any campaign fund. (Officers and employees obviously do not have the option of using campaign funds and would have to resort to separate legal defense funds for actions arising out of their official duties.) The Select Committee on Ethics established an exemption to Rule 43, clause 7, such that funds raised specifically for legal defense are not deemed to be campaign contributions.⁷⁷ Such legal defense funds are, however, subject to the gift rule.

Under the gift rule, a Member, officer, or employee must get a prior written waiver from the Committee in order to accept contributions to a legal defense fund of more than \$250 a year from any source other than a relative. The Committee will consider a waiver request where the fund complies with certain general guidelines: The fund should be set up as a trust, to be administered by an independent trustee who will oversee fundraising. The trustee may not have any family, business, or employment relationship with the trust's beneficiary. Trust funds may be used only for legal expenses, except that any excess funds must be returned to contributors on a pro rata basis or donated to charity. Under no circumstances may the beneficiary of a legal defense trust fund convert the funds to any other purpose. No individual or organization may contribute more than \$5,000 in a single year.

⁷⁶This conclusion accords with rulings of the Federal Election Commission. See FEC Advisory Op. 1986-9, 2 Fed. Election Camp. Fin. Guide (CCH) ¶5851, at 11,267 (Apr. 22, 1986); FEC Advisory Op. 1977-39, 1 *id.* ¶5264, at 10,211 (Aug. 26, 1977).

⁷⁷See FINAL REPORT, H. REP. NO. 95-1837, *supra* note 18, at 15. See also FEC Advisory Op. 1983-37, 1 Fed. Election Camp. Fin. Guide (CCH) ¶5797, at 11,013 (Nov. 18, 1983); FEC Advisory Op. 1983-21, *id.* ¶5725, at 10,994 (Sept. 20, 1983); FEC Advisory Op. 1979-37, *id.* ¶5419, at 10,460 (July 19, 1979).